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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,769	12/22/2000	Charles L. Dunn	12310-002001	7876

22832 7590 03/16/2004

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BOSTON, MA 02109-1808

EXAMINER

CHAMPAGNE, DONALD

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 03/16/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/745,769

Applicant(s)

DUNN ET AL.

Examiner

Donald L. Champagne

Art Unit

3622

ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-39 are rejected under 35 U.S.C. 103(a) as being obvious over Kanter in view of Egendorf.
3. Kanter teaches a method, system and machine-readable medium which stores a method, the method comprising: determining if a third party *participant* referred a buyer of a service, which reads on a good not requiring physical delivery, to a *sponsoring company* seller of the service, and issuing credit and awards to the participants based on sales made, which reads on apportioning revenue from sale of the service between the seller and the third party (col. 16 line 62 to col. 17 line 2).
4. Kanter does not teach an online buyer and seller. Egendorf teaches an online buyer and seller (col. 1 lines 54-60). Because Kanter teaches a system applicable to any buyer and seller, and Egendorf teaches a new business opportunity for many buyers and sellers, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to add the teachings of Egendorf to those of Kanter.
5. All the remaining claim limitations are taught by or obvious from the references. Note in particular that Kanter teaches a multilevel marketing system, where each participant can be a seller as well as a buyer, and can be a fourth party, etc.

### ***Conclusion***

6. **COPY of REFERENCES** - Applicant is entitled to receive a copy of every reference cited by the examiner (except at allowance; MPEP 707.05(a)). Applicant should contact the examiner if a completed form PTO-892 is enclosed, but the cited references are not.

Art Unit: 3622

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Champagne whose telephone number is 703-308-3331. The examiner can normally be reached from 6:30 AM to 5 PM ET, Monday to Thursday. The examiner can also be contacted by e-mail at [donald.champagne@uspto.gov](mailto:donald.champagne@uspto.gov), and *informal* fax communications (i.e., communications not to be made of record) may be sent directly to the examiner at 703-746-5536.
8. The examiner's supervisor, Eric Stamber, can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.
9. **ABANDONMENT** – If examiner cannot by telephone verify applicant's intent to continue prosecution, the application is subject to abandonment six months after mailing of the last Office action. The agent, attorney or applicant point of contact is responsible for assuring that the Office has their telephone number. Agents and attorneys may verify their registration information including telephone number at the Office's web site, [www.uspto.gov](http://www.uspto.gov). At the top of the home page, click on Site Index. Then click on Agent & Attorney Roster in the alphabetic list, and search for your registration by your name or number.



Donald L. Champagne  
Examiner  
Art Unit 3622

5 March 2004